IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 15TH NOVEMBER 2006 / 24TH KARTHIKA 1928

Crl. Rev. Pet.No. 3557 of 2006()

AGAINST THE ORDER DATED 10/08/2006 IN ORDER IN CMP.3540/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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REVN. PETITIONER/ COMPLAINANT:

DAMODHARAN NAIR,
PANJASADANAM, MARUTHAMANAPPALLY MURI,
POOYAPPALLY, KOTTARAKKARA.

BY ADV. SRI. ALEXANDER GEORGE

RESPONDENTS/ STATE AND ACCUSED:

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1. STATE OF KERALA,
   REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. CHARLY TITUS,
   MAMMOOTTIL VEEDU, KADINAMKULAM,
   PUTHUKURUSSY, ATTINGAL.

3. REPPAL CHARLY,
   MAMMOOTTIL VEEDU, KADINAMKULAM,
   PUTHUKURUSSY, ATTINGAL.

4. ANDREW WILLIAM,
   THAIVILAKATHU VEEDU,
   KOCHUVELI, THIRUVANANTHAPURAM.

5. BINDHU WILLIAM,
   THAIVILAKATHU VEEDU,
   KOCHUVELI, THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR ADV. SHRI C.K. SURESH.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 15/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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CRL.R.P. No. 3557 OF 2006

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Dated this the 15th November , 2006

O R D E R

This revision is filed challenging the order dated 10th August, 2006 in C.M.P.No. 3540 of 2006 on the file of the court of the Judicial Magistrate of the First Class-II, Kottarakkara. By the order impugned, the learned Magistrate dismissed the complaint filed by the petitioner under section 203 of the Code of Criminal Procedure.

2. The records of the case were called for . Perused the records and heard the learned counsel for the petitioner and the learned Public Prosecutor. It is not necessary to issue notice to the respondents Nos. 2 to 5, since at this stage, they have no right to be heard. It is stated in the complaint filed by the petitioner that his son was working abroad(in Kuwait). The first accused was also working in Kuwait. The allegation is that the petitioner was made to believe that his son, Prabhullachandra Ghosh was in jail in Kuwait and that to get his release, the petitioner had to spend Rs. Two lakhs. The petitioner stated that he had no sufficient

resources to pay the amount. The further allegation is that the accused persons induced the petitioner/complainant to execute an assignment deed of the property belonging to the petitioner in favour of the first accused. It is stated that believing the words of the accused, the petitioner executed the assignment deed. Even thereafter, whereabouts of the son of the petitioner are not known. It is stated in the complaint that in spite of the objections having been raised by the complainant, mutation was effected in the name of the first accused by influencing the village officer. There are clear averments in the complaint disclosing the offence under section 420 of the Indian Penal Code. It cannot be said that the averments if taken as true, no offence is made out . Learned Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure holding thus:

> "On analysing the sworn statement of complainant, I do not find any ground for proceedings against the accused 1 to 4 since the allegations levelled against the accused is only civil nature and nothing has been proved so as to attract the ingredients under section 420 and 34 IPC. If the complainant decides to cancel the document as executed he can file civil suit for setting aside the document on the ground of fraud. "

3. Even if the petitioner/complainant has a right to approach civil court, nothing prevents him from filing a complaint against the accused persons alleging offence under section 420. The availability or otherwise of a civil remedy is not a bar to file a complaint. The learned Magistrate was not at all justified in dismissing the complaint invoking the power under section 203 of the Code of Criminal Procedure. The order impugned is liable to be set aside and it is accordingly set aside. The Magistrate shall take the complaint on file and issue process to the accused persons.

Crl. Revision Petition is allowed as above.

K.T. SANKARAN,
JUDGE.

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